

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CURTIS A. MARTEN,

Plaintiff,

v.

Dr. RICHARD HENRY, *et al.*,

Defendants

No. 09-5733 RBL

ORDER ADOPTING REPORT AND
RECOMMENDATION GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR
VOLUNTARY DISMISSAL

The Magistrate Judge recommends that this prisoner civil rights action be dismissed. Dkt. 28. The Plaintiff has not filed an objection. Plaintiff has filed a motion for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(B). Dkt. 29. The Court, having reviewed the Report and Recommendation, the motion for voluntary dismissal, and the remaining record, is fully informed and adopts the Report and Recommendation and denies the motion for voluntary dismissal.

This prisoner civil rights action, filed pursuant to 42 U.S.C. § 1983, challenges a Special Commitment Center ("SCC") policy that prevents persons who have been civilly committed as sexually violent predators or persons who have or are now facing civil commitment proceedings as sexually violent predators, from watching R-rated television programs.

1 Defendant Mr. Cunningham is the Superintendent of the SCC and Defendant Ms. Harris
2 is an Associate Superintendent. Defendants moved for summary judgment based on the
3 affirmative defense of qualified immunity.
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5 The Magistrate Judge recommends this Court grant the motion. As noted in the Report
6 and Recommendation, a person who is the subject of involuntary civil commitment is not
7 entitled to exercise his constitutional rights in the same manner as other citizens. The exercise of
8 those rights is subject to reasonable standards. States have wide latitude in developing treatment
9 regimes for sexually violent predators, and this policy falls within this wide latitude.
10 Accordingly, Defendants are entitled to summary judgment.
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12 In apparent response to the Report and recommendation, Plaintiff has moved for a
13 voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(B). Rule 41(a)(1)(B)
14 provides that a plaintiff may dismiss an action without court order either by filing a notice of
15 dismissal before the opposing party serves either an answer or a motion for summary judgment;
16 or a stipulation of dismissal is signed by all parties who have appeared. Here, the Defendants
17 filed a motion for summary judgment prior to the Plaintiff's filing of the motion for voluntary
18 dismissal. Accordingly, Plaintiff is not entitled to a Rule 41(a) dismissal.
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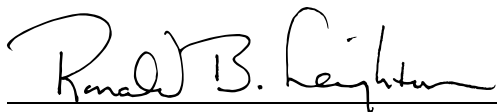
21 The Court, having reviewed the Report and Recommendation of Magistrate Judge J.
22 Richard Creatura, Plaintiff's motion for voluntary dismissal, and the remaining record, does
23 hereby find and ORDER:

- 24 (1) The Court adopts the Report and Recommendation. Dkt. 28
25 (2) Defendants' Motion for Summary Judgment is GRANTED. Defendants are
26 entitled to qualified immunity from suit.

(3) Plaintiff's Motion for Voluntary Dismissal (Dkt 29) is DENIED.
ORDER ADOPTING REPORT AND RECOMMENDATION- 2

- 1 (4) The Clerk is directed to send copies of this Order to Plaintiff, and to the
2 Hon. J. Richard Creatura.

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4 DATED this 30th day of June, 2010.

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7 RONALD B. LEIGHTON
8 UNITED STATES DISTRICT JUDGE
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